

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

R-2006-0001, In re 2006 Annual Report of the Advisory Committee on Rules

Pending before the New Hampshire Supreme Court is a proposal to adopt Supreme Court Rule 57, which would establish the New Hampshire Lawyers' Assistance Program. The New Hampshire Bar Association has filed a proposal regarding how the Lawyers' Assistance Program should be funded. The proposal would reduce the current assessment imposed upon attorneys to fund the Public Protection Fund established by Supreme Court Rule 55, while imposing an assessment upon attorneys to fund the Lawyers' Assistance Program. Under this proposal, the total of the two assessments would not exceed the current assessment for the Public Protection Fund.

On or before January 29, 2007, members of the bench, bar, legislature, executive branch, or public may file with the clerk of the supreme court comments on this funding proposal. Comments may be filed with the clerk of the supreme court; an original and seven copies of all comments shall be filed. Comments may instead be e-mailed to the court at:

rulescomment@courts.state.nh.us

The Bar Associations' funding proposal is described in Appendix A. Proposed Supreme Court Rule 57 is set forth in Appendix B. Copies of the

appendices are available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646). In addition, the proposed changes are available on the Internet at:

<http://www.courts.state.nh.us/index.htm>

December 5, 2006

ATTEST: _____
Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX A

The New Hampshire Bar Association expects that the cost of the Lawyers' Assistance program will be approximately \$100,000 to \$125,000 per year. The Bar Association believes that the Lawyers' Assistance Program (LAP) will result in the reduction of professional conduct claims and claims against the Public Protection Fund (PPF). The Bar Association proposes the following annual assessments:

<u>Membership Category</u>	<u>Current Assessment for PPF</u>	<u>Proposed Assessment for</u>		
		<u>PPF</u>	+	<u>LAP</u>
Active Attorneys Over 5 Years	\$50	\$15	+	\$20 (Total=\$35)
Active Attorneys 5 Years and Under	\$35	\$10	+	\$20 (Total=\$30)
Inactive	\$20	\$0	+	\$20 (Total=\$20)
Inactive Retired	\$5	\$0	+	\$5 (Total=\$5)
Judicial	\$40	\$10	+	\$20 (Total=\$30)

APPENDIX B

Adopt new Supreme Court Rule 57 (including Rules 57.1 through 57.10)
as follows:

RULE 57. NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM

PREAMBLE

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a lawyer or judge. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a lawyer or judge to practice or serve. Lawyer or judge impairment is detrimental to the interests of clients, litigants, our legal system, and the general public. The vast majority of States have responded to the issue of lawyer impairment by creating funded lawyer assistance programs as contemplated by this Rule, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to lawyer or judge impairment. The Supreme Court finds that the New Hampshire Lawyers Assistance Program is an appropriate method for addressing the issue of lawyer or judge impairment and that the program will promote the integrity of the legal profession and will thereby directly benefit the people of New Hampshire.

RULE 57.1. ESTABLISHMENT OF THE NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM (LAP)

- (A) Establishment: The New Hampshire Supreme Court hereby establishes a state-wide lawyer assistance program to be known as the New Hampshire Lawyers Assistance Program (LAP), which shall provide immediate and continuing help to members of the legal profession, including, without limitation, active or prospective lawyers and judges, regardless of their status, and law students (members of the legal profession) who are affected by any physical or mental health condition that affects their ability to practice their profession, quality of life, or study of law.
- (B) Purpose: LAP has four primary purposes:

- (1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;
- (2) To assist impaired members of the legal profession to begin and continue recovery,
- (3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and
- (4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.

(C) Funding and Administration:

- (1) The court shall annually assess a sum to be paid by all dues-paying members of the New Hampshire Bar Association, except those members exempted by order of the court, to fund the LAP.
- (2) LAP shall seek to establish additional private and public sources of funding.
- (3) Funding for LAP may also include gifts or bequests from any source and earnings on investments of the LAP fund.
- (4) The fiscal year of LAP shall run from June 1 to May 31.
- (5) LAP may retain and invest its funds which may be carried over to future fiscal years.

RULE 57.2. LAP COMMISSION

(A) Members: The Supreme Court shall appoint commission members to administer and provide advice regarding the management of the LAP. Officers of the commission shall consist of a chair, vice-chair and secretary/treasurer. The chair and vice-chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the commission annually.

(B) Composition: The commission shall consist of eight (8) members, and shall include two persons who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of chemical dependency or mental conditions that affect members of the legal profession.

(C) Terms: The Court shall appoint commission members for initial terms as follows:

- (1) One lawyer for one year;
- (2) One health care provider (active or retired) for two years;
- (3) One lawyer for two years;
- (4) One judge (active or retired) for two years;
- (5) One health care provider (active or retired) for three years;
- (6) One judge (active or retired) for three years; and
- (7) Two lawyers for three years.

Subsequent appointments shall be for a term of three years. No member may serve more than two successive three-year terms.

(D) Duties of the Commission: The members of the governing body should have the following powers and duties:

- (1) Establishing LAP's policies and procedures and providing ongoing advice regarding the same. Such policies and procedures shall be established after reasonable notice to the New Hampshire bench and bar and opportunity for comment.
- (2) General administrative and management responsibility to operate the program to achieve its purpose and goals.
- (3) Responsibility to hire and fire the LAP director.
- (4) To review the budget prepared by the LAP staff and present the budget to the Supreme Court.
- (5) To make reports to the Supreme Court annually or as otherwise required.
- (6) To ensure that the duties listed under Rule 57.3 are carried out in the absence of a director of the program.

(E) Meetings: The commission shall meet quarterly, upon call of the chair or upon the request of three (3) or more members. A quorum for any meeting shall be four (4) members.

RULE 57.3. DIRECTOR OF THE PROGRAM

(A) Appointment/Hire: The commission shall recruit, hire, retain, supervise and may terminate the LAP director.

(B) Qualifications: The director shall have sufficient experience and training to identify and assist members of the legal profession affected by the conditions described in Rule 57.1(A) above, as well as sufficient

administrative expertise to competently manage a human services organization. A lawyer is preferred.

(C) Duties and Responsibilities: The director's duties and responsibilities shall include but not be limited to the following:

(1) To work with the commission to develop a vision and plan to ensure that the LAP becomes a vital and credible resource for the New Hampshire legal community;

(2) To act as the initial contact point for all referrals to the LAP, whether voluntary or involuntary. The director should always remain accessible to current members or to any attorney seeking help, and should never be insulated from the telephone or from personal contact. The position will require that the director be ready, either alone or together with a program volunteer, to travel within the State to meet with an attorney in need of the LAP;

(3) To help members of the legal profession and their families to secure counseling and treatment for chemical dependency and mental conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard the director will be responsible for evaluating referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for members or prospective members needing evaluation, treatment, or aftercare;

(4) To establish and maintain regular contact with the New Hampshire Bar Association, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct and their staff, and other agencies or committees that serve either as sources of referral or resources in providing help;

(5) To help lawyers, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession;

(6) To establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate under Rule 57.7 and 57.5(E). In furtherance of this duty, the director should work with the organizations listed in Rule 57.3(C)(4) above, as well as the commission, to create and maintain a working relationship that respects an appropriate balance between the goals of the LAP and those of the disciplinary committees and the New Hampshire Bar Association;

(7) To recruit, select, train and coordinate the activities of volunteer lawyers and judges who will provide assistance, and provide for their identities and addresses to be generally known to the courts, bar and other appropriate referral entities. In furtherance of this duty the director should assist in coordinating volunteer support meetings and attend the meetings on a periodic basis to address questions or concerns of the volunteers;

(8) To work to establish and maintain a confidentiality policy that ensures confidentiality as an essential component of the LAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of LAP volunteers. Also included is the development of rules or policies necessary to implement the immunity protections granted under Supreme Court Rule 37(1)(e);

(9) To plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, and civic organizations of the advocacy of early intervention and prevention and the assistance that is available to those in need;

(10) With the cooperation of Franklin Pierce Law School, to plan and deliver educational programs and materials bringing to their curriculum a substance abuse component informing students of the nature and effect of substance abuse, its risks to those in the legal profession, and the resources available through LAP;

(11) To be responsible for the day-to-day administration of the LAP, including the development of job descriptions for LAP staff personnel, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The director will also be responsible, with the oversight of the commission, for the LAP's annual budget and oversee its fiscal management;

(12) In appropriate situations, *i.e.*, where no issue of confidentiality exists or has been waived in accordance with state law, to appear at bar disciplinary, court, or bar admission proceedings to provide testimony regarding a legal professional's progress or lack of progress in meeting the purposes for which the LAP was established;

(13) To act as the liaison with the ABA Commission on Lawyers Assistance Programs and with lawyer assistance programs throughout the country;

(14) To establish private and public sources of funding for LAP;
and

(15) Such other duties and responsibilities established by the
commission.

RULE 57.4. VOLUNTEER LAWYERS, JUDGES, AND LAW STUDENTS

The program shall enlist volunteer lawyers, judges, and law students
whose responsibilities may include:

- (A) Assisting in interventions planned by LAP;
- (B) Serving as twelve-step program sponsors and/or recovery mentors;
- (C) Acting as local contact for members of the legal profession seeking
help from the LAP;
- (D) Acting as a contact between LAP and the courts, the Professional
Conduct Committee, the Committee on Judicial Conduct, bar
organizations, local committees, and law schools;
- (E) Providing compliance monitoring when appropriate; and
- (F) Performing any other function deemed appropriate and necessary by
the commission to fulfill its purposes.

RULE 57.5. SERVICES

LAP may provide the following services as the commission determines
feasible based upon the available financial, volunteer, and other resources:

- (A) Immediate and continuing assistance to members of the legal
profession who suffer from the effects of chemical dependency or mental
conditions that result from disease, disorder, trauma or other infirmity
and that affects their ability to practice their profession, quality of life, or
study of law;
- (B) Planning and presentation of educational programs to increase the
awareness and understanding of members of the legal profession to
recognize problems in themselves and in their colleagues; to identify the
problems correctly; to reduce stigma; and, to convey an understanding of
appropriate ways of interacting with affected individuals;
- (C) Investigation, planning and participation in interventions with
members of the legal profession in need of assistance;

(D) Sponsoring and maintaining substance abuse and/or mental health support meetings for members of the legal profession;

(E) Aftercare services upon request, by order, or under contract that may include but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

(F) Monitoring services under Rule 57.7 or under contract that may include but are not limited to, the following: alcohol and/or drug screening programs, tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

RULE 57.6. REFERRALS

(A) Self-referral: Any lawyer, judge, or law student may voluntarily call the LAP seeking assistance for him or herself.

(B) Referrals from Third Parties: LAP shall receive referrals concerning any member of the legal profession from family members, colleagues, friends, law school faculty, law firms or any other source.

(C) Disciplinary Authority Referrals: LAP shall receive referrals from the New Hampshire Supreme Court, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct, General Counsel, Disciplinary Counsel, and the Committee on Character and Fitness (Disciplinary Authority) of the name of any lawyer whom the Disciplinary Authority determines or believes should be contacted by LAP. This provision shall not be construed to prevent the Disciplinary Authority from notifying the LAP of the name of any lawyer whom the Disciplinary Counsel determines should be contacted concerning the LAP. Once a referral is made by the Disciplinary Authority the referred lawyer has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made by the referred lawyer to any LAP personnel while seeking or receiving peer assistance or substance abuse treatment through the LAP.

RULE 57.7. REFERRALS FROM THE PROFESSIONAL CONDUCT COMMITTEE, COMMITTEE ON JUDICIAL CONDUCT, AND THE JUDICIARY

(A) Referrals: LAP may accept referrals regarding lawyers under diversion, or under conditional, provisional, or probational status from the Court, Professional Conduct Committee or the Complaint Screening Committee, and referrals of judges from the Court or the Committee on

Judicial Conduct and referrals regarding prospective lawyers from the Committee on Character and Fitness.

(B) Progress Reports: When LAP accepts a referral under Rule 57.7(A), LAP may provide progress reports or reports of non-compliance by lawyers, judges, or prospective lawyers who are voluntarily receiving monitoring by LAP, or who are subject to monitoring by LAP pursuant to a court order. Notwithstanding Rule 57.8, these reports may be used as evidence in any complaint, investigation, proceeding or appeal relating to such referral from the Court, the Professional Conduct Committee, the Committee on Judicial Conduct, and the Committee on Character and Fitness.

RULE 57.8. CONFIDENTIALITY

(A) Rule 1.6(c) of the New Hampshire Rules of Professional Conduct shall govern the confidentiality of any information revealed by a lawyer, judge, or law student who seeks or receives assistance through the LAP program.

(B) Commission members, employees, and agents including volunteer lawyers, judges, and law students recruited under Rule 57.4 shall be deemed to be “LAP personnel” for the purposes of the confidentiality provisions of Rule 57.6(C) of this Rule and Rule 1.6(c) of the New Hampshire Rules of Professional Conduct.

RULE 57.9. DUTIES AND RESPONSIBILITIES

(A) The duties and responsibilities of commission members, employees and agents of LAP, including volunteers serving under Rule 57.4, are duties and responsibilities owed to the Court. Nothing in these rules shall be construed as creating a civil cause of action or right of suit.

(B) Except as otherwise required by law, or to prevent the commission of a crime, commission members, employees and agents of LAP including volunteers are relieved of the duty of disclosure of information to authorities required by N.H. Rules of Professional Conduct 8.3.

RULE 57.10. FACILITY

Any LAP office shall be so located as to be consistent with the privacy and confidentiality requirements of this Rule.